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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/784,709	02/23/2004	Paul Weatherbee	MAE-WW-2	1478

7590 06/22/2006  
Michael A. Ervin  
8202 Talbot Cove  
Austin, TX 78746

EXAMINER

TRIEU, THERESA

ART UNIT	PAPER NUMBER
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3748

DATE MAILED: 06/22/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/784,709

Applicant(s)

WEATHERBEE, PAUL

Examiner

Theresa Trieu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 March 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 18-23, 28, 29, 32, 33, 47-50, 53 and 54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 18-23, 28, 29, 32, 33, 47-50, 53 and 54 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>Feb. 23, 2004</u> .   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of the species of Figures 19-20 in Paper No. 4 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Applicant's reason for traverse that the instant application contains a generic claim and reserves the right to file a divisional/continuations application is acknowledge; however, not a proper traverse for a restriction requirement.

Accordingly, the requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 18-23, 28, 29, 32, 33, 47-50, 53 and 54 are rejected under 35 U.S.C. 102(b) as being anticipated by Turner (Patent Number 6,241,493).

Regarding claims 1, 2, 18-21, as shown in Figs. 1, 8 and 9, Turner discloses a fluid machine comprising: a housing (12) having a wall defining a generally spherical interior, the housing having at least one port opening (24, 26) in communication with the interior of the housing; a first shaft (32) mounted for rotation relative to the housing about a primary axis (33), wherein at least a portion of the first shaft extends through the housing wall; at least one primary

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vane (50A, 50B) disposed within the interior of the housing that rotates about the primary axis of the first shaft; at least one secondary vane (98A, 98B) disposed within the interior of the housing and mounted to the primary vane on a first pivotal axis, the secondary vane pivotally oscillating between alternating relatively open and closed positions with respect to the primary vane and defining at least a chamber within the housing interior having a volume which varies as the primary vane is rotated about the primary axis; wherein first and second fluids flow through the fluid machine (see col. 10, line 16-col.11, line 1-25); the first fluid being used to power the machine and the second fluid is pumped, compressed, or vacuum pumped; the secondary/primary vane (98A, 98B; 50A, 50B) being adjusted in weight or density so as to provide momentum near the relatively closed position with respect to the primary vane (50A, 50B) that balances the force exerted upon the secondary vane by the fluid pressurized in the at least one chamber; the adjustment being achieved by modifying the density of the materials of manufacture of the secondary vane (98A, 98B); the adjustment is achieved by modifying the amount of void space or total material in the construction of the secondary vane (98A, 97B).

Regarding claims 22, 23, 28, and 29, Turner discloses the secondary vane (98A, 98B) is pivotally coupled to a carrier ring (116), so that the secondary vane is pivotal about a second pivotal axis perpendicular to the axis of rotation (33) of the carrier ring causing the secondary vane to reciprocate between relatively open and closed positions as the secondary vane is rotated about the primary axis by the first shaft; the axis of rotation of the carrier ring being oriented at an oblique angle in relation to the primary axis of the first shaft (32); a second shaft (40) that extends into the interior of the housing opposite the rotary shaft, the second shaft having a spherical portion about which the primary vane (50A, 50B) rotates and wherein the carrier ring is

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rotatably carried on the spherical portion of the second shaft; seals being installed on both primary and secondary vanes (50A, 50B, 98A, 98B) to contact the housing during operation and wherein seals are installed on both primary and secondary vanes to contact the spherical portion of the second shaft during operation; the second shaft (40) being adjustably mounted to the housing so that the second shaft (40) can be oriented in various fixed positions, and further comprising; an adjustable vane guide bearing member disposed within the housing, wherein the adjustable vane guide bearing member oscillates the secondary vane between relatively open and closed positions relative to the primary vane in response to rotation of the primary vane (50A, 50B), varying the point during rotation of the first shaft and the primary vane at which the secondary vane reaches the relatively open and closed positions relative to the housing and the port opening so that communication of the port opening with the chamber is adjusted and therefore the fluid flow volume and/or direction is adjusted (see claim 41).

The method claims 32, 33, 47-50, 53 and 54 are inherent in the operation of the Turner device.

#### ***Prior Art***

The IDS (PTO-1449) filed on Feb. 23, 2004 has been considered. An initialized copy is attached hereto.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and consists of three patents: Gerken (Publication Number DE 808,915), Gidulyan (Publication Number SU 693-047), and Berger (Publication Number DE 4020134), each further discloses a state of the art.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theresa Trieu whose telephone number is 571-272-4868. The examiner can normally be reached on Monday-Friday 8:30am- 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E. Denion can be reached on 571-272-4859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TT  
May 26, 2006



Theresa Trieu  
Primary Examiner  
Art Unit 3748